

## **Insurgents Denied Access to Early Vote Tallies**

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Broadridge Financial Solutions, Inc. ("**Broadridge**"), the leading U.S. firm that distributes materials on behalf of banks and brokers and collects shareholder ballots, recently decided to stop sharing real-time polling information with investors that sponsor shareholder proposals.

Broadridge's announcement came only a few days before the conclusion of a highly publicized and contentious campaign to strip Jamie Dimon, the head of JPMorgan Chase & Co. ("**JPMorgan**"), of his title as chairman. As a result of Broadridge's decision, Dimon and JPMorgan's board of directors continued to receive updates on incoming votes, while the investors that sponsored the shareholder proposal did not.

Lyell Dampeer, a senior executive at Broadridge, said that Broadridge made the decision after it received a request from the Securities Industry and Financial Markets Association ("**SIFMA**"). Since brokerage firms are its clients, Broadridge felt that it was contractually obligated to comply with SIFMA's request. A SIFMA executive denied that the group asked Broadridge to change its practices.

JPMorgan came under pressure after Broadridge's decision was announced and, as a result, the bank reportedly requested that Broadridge provide interim results to the investors sponsoring the proposal. When Broadridge allegedly refused because it was not sure it had the legal authority to release such information, JPMorgan gave the information directly to the investors. However, one proponent of the shareholder proposal said that his office did not receive the information until about 36 hours before the annual meeting and that by then it was too late for the information to be of any strategic value. The final vote tally for the proposal was announced at JPMorgan's annual meeting on May 21, 2013, and the proposal to strip Dimon of his chairman title was supported by only 32.2% of shareholders.

According to news reports, JPMorgan's turnaround came after New York Attorney General Eric Schneiderman's office sent a letter to JPMorgan's general counsel raising concerns about withholding ballot information from shareholders.

Several groups have called on the U.S. Securities and Exchange Commission (the "**SEC**") to act. U.S. Senator Charles Schumer sent a letter to SEC Chairman Mary Jo White requesting that the SEC create "clear rules of the road" for the disclosure of vote tallies during proxy fights. Schumer said that "these disclosures should be made available to all interested parties in a fair and transparent manner, to ensure a level playing field in the proxy solicitation process."

The Council of Institutional Investors ("**CII**"), a non-profit association of corporate, public and union employee benefit plans, also called on the SEC to "do all in its power to put an immediate stop to this patently unfair and arbitrary change in practice." CII said that Broadridge's decision "raises deeply troubling questions about the fairness and impartiality of the proxy system." CII argued that Broadridge has an obligation to the investing public in general, and that, "[i]f Broadridge cannot demonstrate fairness to all interested parties, regulators should intervene."

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